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RECORD, CASE No. 14,533.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 1071.

A. C. PETRI AND OSWALD PETRI, DOING BUSINESS AS A. C. PETRI & BROTHER, PLAINTIFFS IN ERROR,

vs.

THE COMMERCIAL NATIONAL BANK OF CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED MARCH 21, 1891.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 24, 1891.

1 Be it remembered that at a term of the circuit court of the United States in and for the fifth circuit of the United States and the northern district of Texas, begun and holden at the city of Dallas, on the 12th day of January, A. D. 1891—present and presiding, the Honorable A. P. McCormick, United States district judge—and which term adjourned on the 6th day of March, A. D. 1891, the following cause came on for trial, to wit:

COMMERCIAL NATIONAL BANK OF CHICAGO
vs.
A. C. PETRI & BRO. } # 1296.

Plaintiff's First Amended Original Petition.

In the U. S. Circuit Court for the Northern District of Texas, at Dallas, Texas, Jan'y Term, 1891.

COMMERCIAL NAT'L BANK OF CHICAGO
vs.
A. C. PETRI & BRO. } # 1296.

Now comes the plaintiff, by its attorney, under leave of the court, and amends its first original petition, filed herein on May 6, 1890, and for amendment and in lieu thereof makes and files this its first amended original petition and states as follows:

To the honorable judges of the United States circuit court for the northern district of Texas:

Your petitioner, The Commercial National Bank of Chicago, hereinafter styled plaintiff, complaining of A. C. Petri and Oswald Petri, hereinafter styled defendants, represents and shows—

That the plaintiff is a national banking corporation, duly organized under the national banking laws of the United States
2 of America, and has its domicile and principal office of business in the city of Chicago, State of Illinois, and is a citizen of said State of Illinois.

That the defendants are citizens of the State of Texas and reside in the county of Dallas, in said State of Texas and in the northern district of Texas, and do business in said county and State as partners under the firm name and style of A. C. Petri & Bro.

That heretofore, to wit, on the 6th day of December, 1889, the C. J. L. Meyer & Sons Co., a corporation duly incorporated under the laws of the State of Illinois and a resident citizen of said State of Illinois, drew its certain draft or bill of exchange upon the defendants herein, wherein and whereby it requested said defendants, partners as aforesaid, to pay, three months after date, to the order of itself, the C. J. L. Meyer & Sons Co., the sum of $1,000, for value received, and to charge the same to the account of said C. J. L. Meyer & Sons Co.; that on the same day the said C. J. L. Meyer & Sons Co. dre- its certain other draft or bill of exchange upon the defendants, wherein and whereby they requested said defendants, partners as aforesaid, to pay, four months after date, to the order of itself, the

C. J. L. Meyer & Sons Co., the sum of $1,050.62, value received, and to charge to the account of said C. J. L. Meyer & Sons Co.; that subsequent thereto, to wit, on the 10th day of December, 1889, the said C. J. L. Meyer & Sons Co., still citizen and resident of the State of Illinois as aforesaid, drew its certain other draft or bill of exchange upon the defendants herein, wherein and whereby it requested said defendants to pay, three months after date, to the order of itself, the said C. J. L. Meyer & Sons Co., the sum of $1,050.61, value received.

That subsequent thereto the said three drafts or bills of ex-
3 change were present- to the defendants herein, the said *said* A. C. Petri & Bro., for acceptance, and thereupon the said defendants, under their said firm name, by writing their name across the face of each and all of said drafts or bills of exchange, accepted the same and all of them.

That subsequent thereto and before the maturity thereof the said drafts or bills of exchange so accepted by defendants as aforesaid were, by the said C. J. L. Meyer & Sons Co., by their endorsement on the back of each of them, transferred for value to the plaintiff herein; that said transfers and endorsement to the plaintiff were made before the maturity of said drafts or bills of exchange or of either of them, and plaintiff thereby became and now is the owner thereof for value and received the same without notice of any defect or infirmity in the same or in the issuance thereof and in the usual course of business; that said defendants, by reason of the premises and their said acceptances as aforesaid, became liable and promised to pay plaintiff said drafts or bills of exchange, according to their tenor and effect and according to their said acceptances aforesaid; that said defendants, although often requested so to do, have failed and refused and still fail and refuse to pay said drafts or bills of exchange and their acceptances thereof or any part thereof, though the same are long since past due, to plaintiff's damage in the sum of five thousand dollars.

Plaintiff further says that — the maturity of said drafts or bills of exchange the same were duly presented to said defendants for payment by John Hardie, a notary public in and for the county of Dallas, State of Texas; that defendants refused to pay said drafts or any of them or any part thereof, and the same were, by said notary

public, duly protested for non-payment; that the amount of
4 the protest fees due upon said drafts be reason of said protest amounts to $3.50 in each case, and altogether amounts to the sum of $10.50; that said sum has been paid by plaintiff to said notary public, and by virtue of the facts as herein stated the said defendants are liable to plaintiff for said protest fees.

The premises considered, plaintiff prays, the defendants having already been cited and answered herein, that on final hearing it have judgment for the amount of said drafts or bills of exchange and the acceptances thereof, interest due thereon, said protest fees, and for all other and further relief, both general and special, that to the court may seem just, mete, and proper.

LEAKE, SHEPARD & MILLER,
Plaintiff's Attorneys.

The foregoing has the following endorsement, to wit:
#1296. Com. Nat'l Bank of Chicago *vs.* A. C. Petri & Bro. Pl'tf's first amended original petition. Filed Jan'y 27, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

5 *Defendants' Second Amended Original Answer.*

In U. S. Circuit Court, Northern District of Texas, at Dallas, January Term, 1891.

COMMERCIAL NATIONAL BANK OF CHICAGO
vs.
A. C. PETRI & BRO. } #1296.

Now come defendants and, having first obtained leave of the court, file this their second amended original answer in lieu of their original answer, filed herein on ——, and of their first amended original answer, filed herein on June 3, 1890, — answering said defendants, say:

That they demur to plaintiff's petition filed herein because the same is insufficient in law to require these defendants to answer thereto; and, specially excepting to said petition, defendants say the same is insufficient because it appears from the allegations of said petition that this court has no jurisdiction to determine the controversy pleaded and raised by plaintiff; and of these demurrers defendants pray the judgment of the court, &c.

McCORMICK & SPENCE,
Att'ys for Def'ts.

And, further answering, said defendants come and deny all and singular the allegations in plaintiff's said petition contained; and of this they put themselves upon the country.

And, further answering and by way of plea, these defendants respectfully show to the court that these defendants and the C. J. L. Meyer & Sons Co., the owner of the acceptances sued on, have been engaged in business transactions between themselves for many years; these defendants during the whole time of said transactions
6 have been accustomed to purchase from said C. J. L. Meyer & Sons Co. certain lumber, sash, doors, &c., in car-load lots, and in payment therefor would accept the drafts drawn upon them by said C. J. L. Meyer & Sons Co. with the understanding that if, when said acceptances matured, said defendants were not able conveniently to pay them that said acceptances might be paid by renewal acceptances given by these defendants to said C. J. L. Meyer & Sons Co.

That said C. J. L. Meyer & Sons Co. enjoyed a good credit and possessed a large capital until after the execution of the acceptances sued on; that at the time of the execution of the acceptances sued on certain acceptances given by def'ts to said C. J. L. Meyer & Sons Co., equalling in amount the acceptances sued on, were soon to mature, and the said C. J. L. Meyer & Sons Co., well knowing of their

own utter insolvency, but of which def'ts and the business world generally were ignorant, procured from defendants the acceptances sued on upon the false and fraudulent representation that they, the said C. J. L. Meyer & Sons Co., would furnish to defendants the money to take up said maturing acceptances; that having procured said acceptances upon said promise and representation and without any other consideration, the said C. J. L. Meyer & Sons Co. did not furnish said money to take up said maturing acceptances, which def'ts had to and did pay, but said C. J. L. Meyer & Sons Co. negotiated said renewals to pl'ffs, who took same with full notice of the false and fraudulent means by which they had been procured from defendants and with full knowledge of the insolvency of said C. J. L. Meyer & Sons Co.; of which defendants put themselves upon the country and pray judgment.

McCORMICK & SPENCE,
Att'ys for Def'ts.

7 Before the undersigned authority on this day personally appeared A. C. Petri, one of the def'ts herein, who, being duly sworn, deposes and says that the facts stated in the foregoing plea are true as therein stated.

A. C. PETRI.

Sworn to and subscribed before me this Jan'y 26, 1891.
J. H. FINKS, *Clerk*,
By CHAS. H. LEDNUM, *Deputy*.

The foregoing has the following endorsement, to wit:
1296. The Commercial National Bank of Chicago *vs.* A. C. Petri & Bro. Def'ts' 2nd amended original answer. Filed Jan'y 26, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

8 *Plaintiff's First Amended Supplemental Petition.*

In U. S. Circuit Court for the Northern District of Texas, at Dallas, Texas, Jan'y Term, 1891.

COMMERCIAL NAT'L BANK OF CHICAGO *vs.* A. C. PETRI & BRO. } # 1296.

Now comes said plaintiff and, under leave of the court first had and obtained, amends its first supplemental petition, filed herein on June 5, 1890, and in lieu thereof makes and files this its first amended supplemental petition, and thereby demurs to defendants' special plea contained in their second amended original answer, filed herein on January 26, 1891, and says that said special plea is insufficient in law, and plaintiff special- excepts thereto:

1. Because said plea does not set forth the date when the alleged acceptances for which defendants allege the acceptances sued on were given in lieu thereof would mature.

2. Because said special plea does not state that said C. J. L.

Meyer & Sons Co. were guilty of any false and fraudulent representation in reference to any matter existing or non-existing at the time when defendants accepted said drafts or bills of exchange herein sued on.

3. Because said special plea seeks to invalidate the acceptances sued on, not by reason of any false statement as to matter of fact alleged to have been made by said C. J. L. Meyer & Sons Co., but only on the ground that the said C. J. L. Meyer & Sons Co., after said acceptances, failed to furnished money to pay debts for which the defendants were legally bound to pay; and of these demurrers plaintiff prays the judgment of the court.

9 LEAKE, SHEPARD & MILLER,
Plaintiff's Attorneys.

And, further replying to said special plea contained in defendants' amended original answer, plaintiff denies every allegation contained therein that is inconsistent with the averments contained in plaintiff's first amended original petition, and specially denies that it had any notice or knowledge when it acquired the said acceptances sued on that the same were without consideration or otherwise invalid, but here again asserts that it acquired said acceptances and obligations in due course of business, before maturity thereof, for a valuable consideration without any knowledge or notice of any infirmity or defect in said acceptances and obligations, and plaintiff was then and is now an innocent purchaser and holder thereof; and plaintiff further says that if defendants were induced to accept said drafts or bills of exchange through any false or fraudulent means practiced upon them by said C. J. L. Meyer & Sons Co. or otherwise this plaintiff had no knowledge thereof. Wherefore plaintiff prays judgment as in its original petition.

LEAKE, SHEPARD & MILLER,
Plaintiff's Attorneys.

The foregoing has the following endorsement, to wit:
1296. Com. Nat'l Bank of Chicago *vs.* A. C. Petri — Bro. Pl't'f's first amended supplemental petition. Filed Jan'y 17, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

10 *Judgment.*

COMMERCIAL NAT'L BANK OF CHICAGO
vs.
A. C. PETRI & BRO. } # 1296.

FEB'Y 2, 1891.

On this day, this cause being called for trial, came the parties, by their attorneys, and announced ready and, a jury being waived by an agreement in writing filed herein, the issues of law and fact are submitted to the court. Then came on to be heard the defendants' demurrer and exceptions to plaintiff's original petition, and, the argument of counsel thereon having been heard, it is the opin-

ion of the court that the law is with the plaintiff. It is therefore ordered by the court that said demurrer and exceptions be, and they are, overruled; to which ruling of the court the defendants excepted; and, the defendants making no further defence and it appearing to the court that the plaintiff's cause of action is liquidated and proved by the three written acceptances of the defendants *and* described in plaintiff's petition, it is ordered that the clerk assess the damages sustained by the plaintiff; and, the clerk having here now assessed the damages aforesaid at the sum of $3,328.66—

It is therefore ordered and adjudged by the court that the said plaintiff, The Commercial National Bank of Chicago, do have and recover of and from the defendants, A. C. Petri and Oswald Petri and of their said firm of A. C. Petri & Bro., the said sum of three thousand three hundred twenty-eight and $\frac{66}{100}$ dollars, with interest thereon after this date, at the rate of 8% per annum, together with its costs in this behalf expended, and that execution issue therefor.

11 It is further ordered that execution issue for the use of the officers of court against each party, respectively, for the costs by them herein incurred.

12 *Bill of Exceptions.*

In the Circuit Court of the United States for the Northern District of Texas, at Dallas, January Term, 1891.

COMMERCIAL NATIONAL BANK OF CHICAGO *vs.* A. C. PETRI & BRO. } # 1296.

Be it remembered that on the trial of said cause at said term, before the Honorable A. P. McCormick, judge, a jury having been waived, defendants urged a special demurrer to the plaintiff's petition in the following terms:

"Specially excepting to said petition, defendants say the same is insufficient because it appears from the allegations of said petition that this court has no jurisdiction to determine the controversy pleaded and raised by plaintiff;" which demurrer was overruled by the court; to which ruling of the court the defendants then and there in open court excepted, and the defendants now here, in term time, tender this bill of exceptions to the above ruling of the court, and pray that the same be allowed, sealed, signed, and filed and made a part of the record in this cause, and it is accordingly so ordered.

Given under my hand and seal, with scrawl for seal, this 25 day of February, A. D. 1891.

A. P. McCORMICK, *Judge.* [c. s.]

The foregoing has the following endorsement, to wit:

1296. Commercial National Bank of Chicago *vs.* A. C. Petri & Bro. Bill of exceptions. Filed Feb'y 25, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy. McCormick & Spence, att'ys for def'ts.

13 *Petition of Plaintiffs in Error.*

A. C. PETRI & OSWALD PETRI, Doing Business as A. C. Petri & Bro., Plaintiffs in Error,
vs.
COMMERCIAL NATIONAL BANK OF CHICAGO, Defendants in Error.

To the honorable judges of the Supreme Court of the United States of America:

Your petitioners, A. C. Petri and Oswald Petri, doing business as A. C. Petri & Bro., respectfully show to this honorable court that in the record and proceedings, as also in the rendition of the judgment of a plea in said circuit court of the United States for the northern district of Texas, at Dallas, at its January term, A. D. 1891, wherein The Commercial National Bank of Chicago was plaintiff and your petitioners, A. C. Petri and Oswald Petri, doing business as A. C. Petri & Bro., were defendants, a manifest error hath happened, to the great damage of your petitioners, as by said record and proceedings duly appears.

And your petitioners, to the end that error, if any hath been, should be duly corrected and full and speedy justice done to your petitioners in this behalf, respectfully pray that this honorable court will duly inspect said record and proceedings, and that the judgment rendered in said cause by the circuit court be reversed and a new trial awarded your petitioners, or that the said judgment rendered in said cause by the circuit court be reversed and said cause be dismissed.

And as in duty bound your petitioners will ever pray.

McCORMICK & SPENCE,

14 *Attorneys for A. C. Petri and Oswald Petri, Doing Business as A. C. Petri & Bro.*

The foregoing has the following endorsement, to wit:

A. C. Petri & Brother, plaintiffs in error, *vs.* Commercial National Bank of Chicago, def't in error. Petition of plaintiffs in error. Filed Feb'y 25, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

15 *Writ of Error Bond.*

Know all men by these presents that we, A. C. Petri and Oswald Petri, doing business as A. C. Petri and Brother, as principal, and D. W. C. Harry and J. T. Elliot, as sureties, are held and firmly bound unto the Commercial National Bank of Chicago in the full and just sum of four thousand ($4,000.00) dollars, to be paid to the said The Commercial National Bank of Chicago, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25 day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a term of the circuit court of the United States for the northern district of Texas, at Dallas, in a suit depending in said court between The Commercial National Bank of Chicago, as plaintiff, and A. C. Petri and Oswald Petri, doing business as A. C. Petri and Brother, defendants, a judgment was rendered against the said A. C. Petri and Oswald Petri, doing business as A. C. Petri and Brother; and the said A. C. Petri and Oswald Petri, doing business as A. C. Petri and Brother, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commercial National Bank of Chicago, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days after February 25, A. D. 1891:

Now, the condition of the above obligation is such that if the said A. C. Petri and Oswald Petri, doing business as A. C. Petri and Brother, shall prosecute said writ of error to effect and answer
16 all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

A. C. PETRI & BROTHER. [SEAL.]
A. C. PETRI. [SEAL.]
OSWALD PETRI. [SEAL.]
D. W. C. HARRY. [SEAL.]
J. T. ELLIOT. [SEAL.]

Sealed and delivered in the presence of—

—— ——.

Approved by—
A. P. McCORMICK,
U. S. District Judge.

The foregoing has the following endorsement, to wit:
A. C. Petri & Brother, pl'ffs in error, *vs.* Commercial National Bank of Chicago, def't in error. Writ of error bond. Filed Feb'y 25, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

17 A. C. PETRI AND BROTHER, Plaintiffs in Error,
vs.
THE COMMERCIAL NATIONAL BANK OF CHICAGO, Defendant in Error.

The President of the United States of America to The Commercial National Bank of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington at the expiration of thirty full days after the service hereof upon you, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Texas, wherein A. C. Petri and Oswald Petri, doing business as A. C. Petri & Brother, are plaintiffs in error and you are defendant in error, to

show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25th day of February, A. D. 1891.

A. P. McCORMICK, *Judge.*

17½ [Endorsed:] A. C. Petri & Brother, pl'ffs in error, *v.* Commercial National Bank of Chicago, def't in error. Citation in error. Filed Feb'y 26, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

OFFICE OF U. S. MARSHAL,
NORTHERN DISTRICT OF TEXAS.

I certify that I received the within writ on the 26th day of February, 1891, at Dallas, Texas, and that I executed the same on the 26th day of February, 1891, at Dallas, Texas, by then and there delivering into the hands of W. W. Leake, of the firm of Leake, Shepherd and Miller, attorneys and agents for the defendants in error.

GEO. A. KNIGHT,
U. S. Marshal,
By R. K. HALE, *Deputy.*

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The Commercial National Bank of Chicago, plaintiff, and A. C. Petri and Oswald Petri, doing business as A. C. Petri and Brother, defendants, a manifest error hath happened, to the great damage of the said A. C. Petri and Oswald Petri, doing business as A. C. Petri and Brother, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days after February 25, A. D. 1891, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 25 day of February, in the year of our Lord one thousand eight hundred and ninety-one.

J. H. FINKS,
Clerk of the Circuit Court of the United States for the Northern District of Texas, at Dallas,
By CHAS. H. LEDNUM, *Deputy.*

Allowed by—
A. P. McCORMICK, *Judge.*

[Endorsed:] No. —. A. C. Petri & Brother, pl'ffs in error, *v.* Commercial National Bank of Chicago, def't in error. Writ of error. Filed Feb'y 25, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy. McCormick & Spence, att'ys for plaintiffs in error.

19 *Assignment of Error.*

A. C. PETRI & OSWALD PETRI, Doing Business as A. C. Petri & Brother, Plaintiffs in Error,
vs.
COMMERCIAL NATIONAL BANK OF CHICAGO, Defendant in Error.

In the Supreme Court of the United States, October Term, A. D. 1890.

And now comes plaintiff- in error in the above-entitled cause, by their counsel, and make the following assignment of error herein, first, because the court erred in overruling the demurrer of plaintiffs in error (defendants below) to the petition of defendants in error (plaintiffs below); which demurrer was in terms as follows:

"And, specially excepting to said petition, defendants say the same is insufficient, because it appears from the allegations of said petition that this court has no jurisdiction to determine the controversy pleaded and raised by plaintiffs." See defendants' bill of exceptions.

McCORMICK & SPENCE,
Attorneys for A. C. Petri & Oswald Petri, Plaintiffs in Error.

The foregoing has the following endorsement, to wit:

A. C. Petri & Brother, plaintiffs in error, *vs.* Commercial National Bank of Chicago, def't in error. Assignment of error. Filed Feb'y 25, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

20 *Agreement of Att'ys as to Speeding a Hearing.*

In the United States Circuit Court at Dallas, Texas.

THE COMMERCIAL NATIONAL BANK OF CHICAGO
vs.
A. C. PETRI & BRO. } # 1296.

It is hereby agreed by and between the attorneys of the parties to the above entitled and numbered suit, in order that the Supreme Court may receive printed arguments without regard to the number this case may occupy on the docket, that the counsel on both sides will submit said cause within the first ninety days of the term of the Supreme Court, under rule 20 of the Supreme Court of the United States, and that this cause shall be heard and determined as soon as practicable under the rules and directions of the Supreme Court of the United States.

LEAKE, SHEPARD & MILLER,
Att'ys for Plaintiff, The Commercial Nat'l Bank of Chicago.
McCORMICK & SPENCE,
Att'ys for Defendants, A. C. Petri & Bro.

The foregoing has the following endorsement, to wit:
1296. Commercial National Bank *vs.* A. C. Petri & Bro. Agreement of att'ys as to speeding a hearing. Filed M'ch 3, 1891. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

21 *Clerk's Certificate.*

I, J. H. Finks, clerk of the circuit court of the United States for the northern district of Texas, in the fifth circuit, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record in cause # 1296, wherein The Commercial National Bank of Chicago is plaintiff and A. C. Petri & Bro. are defendants, lately pending in said court at Dallas, Texas, except that the original writ of and citation in error are included in the transcript instead of copies thereof.

In testimony whereof I have hereunto affixed the seal of said court, at Dallas, Texas, and the signature of the clerk thereof this the 11th day of March, A. D. 1891.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.]

J. H. FINKS,
Clerk of said Court,
By CHAS. H. LEDNUM, *Deputy.*

Endorsed on cover: Case No. 14,533. N. Texas C. C. U. S. No. 1071. A. C. Petri and Oswald Petri, doing business as A. C. Petri & Brother, plaintiffs in error, *vs.* The Commercial National Bank of Chicago. Filed March 21, 1891.

Office Supreme Court U. S.
FILED.
DEC 23 1891
JAMES H. McKENNEY.
CLERK

Supreme Court of the United States.

No. 1071.—Submitted.

PETRI

vs.

COMMERCIAL NATIONAL BANK OF CHICAGO.

JURISDICTION OF SUITS BY NATIONAL BANKS.

Brief of W. Hallett Phillips for Plaintiffs in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

No. 1071.—Submitted.

PETRI

vs.

COMMERCIAL NATIONAL BANK OF CHICAGO.

Brief of W. Hallett Phillips for plaintiffs in error.

The suit was brought in the circuit court for the northern district of Texas by the Commercial National Bank of Chicago, a national banking association located in Illinois and described in the petition as a citizen of Illinois.

The defendants are not otherwise described than as "A. C. Petri & Bro." They are alleged to be citizens of the State of Texas, and "do business in said State under the firm name and style of A. C. Petri & Bro."

The suit was to recover the amount of several drafts on the defendants drawn by Meyer & Sons Co., an Illinois corporation, and held by the bank.

The defendants demurred on the ground that the court was without jurisdiction to entertain the suit.

The demurrer was overruled and final judgment given in favor of the plaintiff.

The defendants by their writ of error present to this Court the question of jurisdiction, and assign for error the overruling of the demurrer.

The question is, whether a national bank, has now the right of suing in the Federal courts a citizen of a different State from that in which it is located, by reason alone of diverse citizenship.

The legislation on the subject is as follows:

National-bank act of 1864.

SEC. 8. * * * may make contracts, sue and be sued, complain and defend, in any court of law and equity as fully as natural persons. (§ 5135 R. S.)

SEC. 57. That suits, actions, and proceedings, against any association under this act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established; or in any State, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases: *Provided, however,* That all proceedings to enjoin the comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located. (National-bank act of 1864, 13 Stat., 101, 116.)

Sec. 57 is contained in sections 5198, 5237, as amended by act of 1875.

Revised Statutes.

SEC. 563 R. S. The district courts shall have jurisdiction as follows:

* * * * * * *

Fifteenth. Of all suits by or against any association established under any law providing for national banking associations within the district for which the court is held.

* * * * * * *

SEC. 629. The circuit courts shall have original jurisdiction as follows:

* * * * * * *

Tenth. Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations.

Act of 1875.

"That suits, actions, and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

Amendment to § 5198, act Feb. 18, 1875, 18 Stat., 316.

Act of July 12, 1882.

"That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations, except suits between them and the United States, or its officers or agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed." (22 Stat., 163.)

Act of 1887.

SEC. 4. That all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. (24 Stat., p. 554.)

Act of 1888.

SEC. 4. Same language as act of 1887. (25 Stat., 436.)

The status of a national bank in the Federal courts is determined by section 4 of the act of 1888, re-enacting the language of section 4 of the act of 1887.

These acts contain the latest legislative declarations on the subject and constitute the present law. They adopt as the test of *jurisdiction* the right of suit in controversies between individual citizens of the same State. They also ordain that a national bank shall for the general purposes of litigation be deemed to be a citizen of the State in which it is located.

We understand it is admitted that a national bank, as the law now stands, is disqualified from suing in the Federal courts by reason of the mere fact that it is incorporated under the laws of the United States.

It has been urged that this result was the only one sought to be attained in the act of 1887, and that its language should be restricted to such meaning.

Otherwise, it is said the jurisdiction of the Federal courts in controversies in which a national bank is a party, would be largely limited to cases dependent upon the *character* of the question involved, such as cases arising under the Constitution and laws of the United States.

If this follows from the language of the act and any inconvenience results, the remedy must be sought at the hands of Congress. This Court can only declare the law as it has been prescribed.

Its language is explicit:

"The circuit and district courts shall not have jurisdiction other than such as they would have in cases *between individual citizens of the same State.*"

The important consideration is, whether under existing law, a national bank has the right to sue and defend in the circuit court in every case, in which that right can be exercised by reason of diverse citizenship.

In other words, can the Federal courts in this class of cases,

exercise the same jurisdiction as they have in controversies between *individual citizens of different States?*

The question is not affected by the decisions sustaining the jurisdiction in suits in which a receiver or agent of a national bank is a party. They are officers of the United States, and on that ground entitled to sue.

Price *vs.* Abbott, 17 Fed. Rep., 507.
Stephen *vs.* Bernays, 41 Fed. Rep., 401.

It is urged by the defendant in error, that as a national bank is a citizen of the State where located, the jurisdiction must be determined by the general provisions of law regarding controversies between citizens of different States.

The purpose of this brief on behalf of plaintiff in error, is to meet that argument.

We submit, that the right of a national bank to sue in the Federal courts, is not conferred by the general provisions of law conferring such right in cases of diverse citizenship, but depends on the particular legislation applicable alone to national banks, in the acts of 1887, 1888.

It is on the ground alone that the present suit is one between citizens of different States, that the jurisdiction is sought to be maintained.

The answer to this position is, that when Congress exercised its undoubted power over the subject of its own creation, and declared it should, for the general purposes of action, be treated as a citizen of the State where located, it had the right to limit and define the extent of its privileges as such citizen, in relation to the jurisdiction of the Federal courts.

This it did when it declared, that the United States courts, should not have jurisdiction in cases in which a national bank was a party "other than such as they would have in cases between individual citizens of the same State."

It is insisted that this construction should not be adopted, as it would prevent a national bank in one State, from re-

sorting to the Federal tribunals in other States, in the pursuit of demands against citizens of such States.

This is but an argument *ab inconvenienti*, and has no place in the determination of the question involved.

Nor would the result be one fraught with such evil consequences that the court should assume Congress never intended it.

Many acts of recent legislation have greatly restricted and curtailed the jurisdiction of the Federal tribunals in controversies between citizens of different States.

The policy has been strongly in the direction of leaving parties in ordinary litigation to seek their remedies in courts. This is especially true as to national banks. Such
e open to those institutions as well as to other

Bank of Bethel *vs.* Pahquioque Bank, 14 Wall., 394.
National Bank *vs.* Morgan, 132 U. S., 140.

There is no ground of inconvenience which demands that we should seek a meaning in the law outside of the plain language used.

It is not denied, that the act of 1887, in so far changed the prior law, as to thenceforth prevent a national bank from suing in the Federal courts in the State where located.

This privilege was formerly possessed under section 639 of the Revised Statutes.

But there is nothing in the language of the act of 1887, which necessarily shows that Congress, while prohibiting a national bank from suing in the Federal courts in the State where located, authorized it, in all cases to sue in the Federal courts in other States.

The Federal jurisdiction, in order to be exercised, must be conferred in the clearest terms.

If Congress had not intended to change materially the previous law, why did they enact at all section 4 of the act of 1887?

The act of 1882 had already placed national banks on the same footing, as respects jurisdiction of the Federal courts, as that possessed by non-Federal banks, or, in other words, the same jurisdiction as that possessed generally by citizens of different States. Its language is that the jurisdiction for suits brought by or against such associations, with certain exceptions not here material, "shall be the same and not other than the jurisdiction by or against banks not organized under any law of the United States."

If Congress had intended the jurisdiction, as provided in the act of 1882, to continue, they would either have retained its language in any new enactment or, what is more reasonable, they would not have made a new enactment, as the old law fully covered the subject-matter.

Congress was not called upon in the act of 1887 to make any provision as to national banks, unless by way of new legislation.

The act is one to amend the act of March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes."

Nowhere in the act of 1875 do we find any reference to national banks.

The subject was provided for by the act of 1882.

When Congress enacted the act of 1887 it was with full knowledge of the act of 1882.

The language of the act of 1887 is wholly irreconcilable with the idea that Congress was doing nothing more than re-enacting the old law.

On the contrary, Congress substitutes section 4 of the act of 1887 in place of section 4 of the act of 1882—in effect, repeals it.

Murdock *vs.* Memphis, 20 Wall., 590.

It is proper to call the Court's attention to the fact, that the question has been decided contrary to our views, by Judge Shiras, in the case of First National Bank *vs.* Forest, 40 Fed. Rep., 705.

The substance of his decision is that Congress, in the first clause of section 4 of the act of 1887, made a national bank a citizen of the State where located; that it must be assumed that Congress intended such bank should have the rights of a citizen, among which is the right to sue a citizen of another State in the Federal courts; that in order to make this clause effective, the rest of the section, notwithstanding its restrictive language, should be so construed as to be in harmony with the first clause.

The Court acknowledges that under the restrictive language of the section, taken by itself, the jurisdiction would not exist, but it asks why should Congress do the vain thing of providing that a national bank should be a citizen of a State, and then in the same act nullify that declaration, by forbidding it the Federal courts in cases in which such courts were open to all other citizens?

If, say the Court, the statute had stopped after providing that a national bank should be considered a citizen of the State where located, there could be no doubt of the Federal jurisdiction as claimed.

That this being so, we should not impute to Congress a design in the subsequent language of the statute, to take away what it had previously granted.

Otherwise, say the Court, what meaning in the provision that a national bank should be considered as a citizen of the State where located?

These grounds we have endeavored to cover in the argument already advanced.

The Court founds its whole argument on one expression as to citizenship, and disregards the particular restrictions on the jurisdiction of the Federal courts. We submit, there is no real antagonism between the clauses of the section.

By providing that a national bank should be held to be "a citizen of the State where located, for the purposes of all actions by or against them," Congress was doing nothing more than declaring that for the general purposes of suit, the citizenship of a national bank should be determined by its *situs*.

By such designation Congress did not imply a right to sue in the courts of the Union.

That particular right is expressed in the clause "that the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State."

Bank of U. S. *vs.* Deveaux, 5 Cr., 86.

The first clause contains no more than the general right to sue and capacity to be sued in every court, which is found in all charters of incorporation.

Such language does not confer the right in itself of suing in the Federal courts.

The question as to the proper court in which the suit is to be brought, in respect of jurisdiction, is left to be determined by other provisions of law. (Per Blatchford, J.)

M'f'g Co. *vs.* Baack, 8 Blatch., 144.

In the act of 1887, particular provision is made as regards the jurisdiction, in the clause limiting it to such as the Federal courts would have in cases between individual citizens of the same State.

Under the bank act of 1864, construed in Mfg. Co. *vs.* Baack, *supra*, a national bank was, under the particular provisions of that act, held to be a citizen of the State where located, and as there were no restrictions on the Federal jurisdiction, held entitled to sue in the Federal courts in another State.

The declaration in the act of 1887, that national banks "shall, for the purposes of all actions by or against them and

all suits in equity, be deemed citizens of the States where respectively located," ought not to control the subsequent clause specifying the extent of the jurisdiction of the Federal courts.

The two clauses are not conflicting. The entire language can be given full effect.

If we should attempt to frame a statute, confining the jurisdiction of the national courts, as concerns national banks, to such cases as the courts would have jurisdiction over if between individual citizens of the same State, I do not see how we could find language more appropriate to convey this meaning, than that used in the very act under consideration.

Why should we impute to Congress ignorance of the meaning of the language used, or that they did not intend to confine the jurisdiction as they expressed it?

The section was not a piece of ill-digested or hasty legislation.

It was not a part of the original bill as it passed the House of Representatives.

It was reported in the Senate as an amendment from the Judiciary Committee of that body, and was adopted as such.

Cong. Rec., vol. 18, p't 3, p. 2543.

On this committee were such lawyers as Mr. Edmunds and Mr. Evarts.

We must assume that, emanating from such authority, the phraseology of the section was carefully selected, and every part of it must be given its full meaning.

It seems to us that there have been three regulations of the subject:

1. Under the original bank act and the Revised Statutes, the right was conferred on a national bank to sue in the Federal courts a citizen of the same State or of a different State, from that in which it was located.

2. Under the act of 1882, this right was greatly curtailed, and such institutions, with exceptions not here material, were placed, as concerns jurisdiction, on the same footing as banks not organized under a law of the United States.

3. Under the acts of 1887 and 1888, which constitute the present law, the right was still further restricted to such jurisdiction as the Federal courts would have in cases between individual citizens of the same State.

This last category, if it correctly states the law, shows that the circuit court was without jurisdiction to entertain the present action.

The judgment should be reversed.

W. Hallett Phillips,
For Plaintiffs in Error.

Office Supreme Court U. S.
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JAMES. H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1071.

A. C. PETRI *et al.*, *Plaintiffs in Error*,

vs.

THE COMMERCIAL NATIONAL BANK OF CHICAGO,
Defendant in Error.

ON ERROR TO THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF TEXAS.

Brief of Defendant in Error.

JOHN SELDEN,
Counsel for Defendant in Error.

Supreme Court of the United States.

OCTOBER TERM, 1891.

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ON ERROR TO THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF TEXAS.

Brief of Defendant in Error.

STATEMENT OF THE CASE.

Myer & Sons Co., an Illinois corporation, having, in December, 1889, drawn to its own order, certain bills of exchange upon the plaintiffs in error, who were citizens of Texas, residing in the Northern Dis-

trict thereof, and doing business under the firm name and style of *A. C. Petri & Bro.*, the bills were accepted by the drawees, and afterwards, and before maturity, indorsed for value unto the defendant in error, the *Commercial National Bank of Chicago*, which, upon non-payment and protest of the instruments, sued and recovered judgment thereon against the acceptors, in the Circuit Court of the United States for that District, the defence interposed being a *demurrer* to the petition.

As the suit was upon "foreign bills of exchange," and as the payee, *qua* payee, might have maintained an action upon them against the acceptors, in the court below, the only question to be here determined, as conceded in the able Brief for the plaintiffs in error, (p. 2,) is whether a national bank located in one State, may, in another State, sue the citizen thereof, in a Circuit Court of the United States for the District wherein the defendant resides.

Points and Authorities.

A National banking association, located in one State, might, under sec. 11 of the Judiciary Act of 1789, (R. S. U. S., sec. 629, sub. 1) sue the citizen of another State, in a Circuit Court of the United States established in either State, because such an associa-

tion was a *citizen* of the State in which the bank was located.

The Manuf. Nat. B'k of Chicago v. Baack, 8 Blatch. 137.

And the jurisdiction conferred by sec. 11 of the Act of 1789, by reason of the difference in the citizenship of the parties, was retained in sec. 1 of the Act Cong. of March 3, 1875, (18 Stat., 470.)

It is nothing, therefore, to say that no "*reference*" to national banks, (Brief, Plffs. in Error, p. 7) is to be found in the latter enactment.

But as a national bank was the mere creature of Congress, receiving its faculties and deriving its rights and obligations from national authority,—(Osborne *v.* U. S. Bank, 9 Wheat. 823,) a suit by or against such a bank, was "necessarily a suit arising under the laws of the United States," (Leather Manuf. Bank v. Cooper, 120 U. S. 781,) and, as such, subject, at the pleasure of Congress, to the jurisdiction of the inferior national tribunals.

Upon this theory, the Circuit Court of the United States for the particular district in which the bank might be located, was vested, under R. S. U. S. sec. 629, sub. 10, with jurisdiction over suits by or against a national bank, without regard either to the value in controversy, or to the citizenship of the parties.

Kennedy *v.* Gibson 8 Wall, 498;

County of Wilson *v.* National Bank, 103 U. S. 776.

Of suits arising under the Constitution, laws or

treaties of the United States; the Act of Congress of March 3, 1875, conferred, by sec. 1, original cognizance upon the Circuit Court of the District whereof the defendant might be an inhabitant, or wherein he might be found, and, by sec. 2, jurisdiction, by removal, upon the Circuit Court, for the District wherein the suit might be pending, at the time of removal, without reference to the citizenship of the parties, where the matter in dispute exceeded, exclusive of costs, the sum or value of $500. (18 Stat., 470.)

As a suit by or against a national bank, because in its own nature a suit arising under the laws of the United States, might, where the sum or value in dispute was sufficient, be *removed*, under sec. 2 of the Act of 1875, into the Circuit Court for the District in which the suit was pending, at the time of the removal,—

Pacif. R. R. Removal Cases, 115 U. S., 17,

Leamer Manuf. Bk. v. Cooper, 120 Id., 781,—

such a suit might, *for the same reason and under like circumstances, be brought*, under the 1st section of that Act, in the Circuit Court for the District whereof the defendant was an inhabitant, or wherein he was found.

A suit to which a national bank was party, might, of course, arise under the laws of the United States, as under the Constitution, or under a treaty, *without reference to the Federal origin of the bank.*

But so long as the national incorporation of the bank continued sufficient, *per se*, to confer jurisdic-

tion upon the Circuit Court, in all suits, of sufficient value, to which the bank might be party, it must have been superfluous to inquire, in any such suit, whether the jurisdiction might be also and equally sustained, on the ground that the suit was one arising under the Constitution, or a treaty, or under other laws of the United States than those establishing or regulating the national banking system.

The Circuit Courts could possess no more than jurisdiction, however numerous the aspects in which it might be found to be conferred.

It was, at length, deemed inexpedient by Congress to suffer *the mere source of the incorporation* of a national bank, to render every suit to which such a bank should be party, cognizable by the Federal tribunals, as a case arising under the laws of the United States.

The 4th section of the Act of Cong. of July 12, 1882, contains the following:

"*Provided, however*, That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking association may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed." (22 Stat. 163.)

Through this *proviso*, the jurisdiction of the Circuit Courts over suits by or against national banks was intended to be limited to such as might be exercised by those tribunals over suits by or against banks which were not incorporated under the laws of the United States.

Union Natl Bank of Cincinnati vs. Miller, 15 Fed. Rep. 703,

Price vs. Abbott, 17 Id., 506,

Natl. Bank of Jefferson vs. Fore, 25 Id., 209;

Whittemore vs. Amoskeag Bank, 134 U. S. 529–530.

"Consequently, so long as the act of 1882 was in force, nothing in the way of jurisdiction could be claimed by a national bank, *because of the source of its incorporation*. A national bank was by that statue placed before the law in this respect the same as a bank not organized under the laws of the United States."

Leather Manuf. Bank vs. Cooper, 120 U. S., 781.

At the time of the passage of the Act of 1882, the only jurisdiction which the Circuit Courts of the United States might exercise over suits brought by or against national banks, but were disabled from exercising in suits brought by or against state banks, was the jurisdiction arising from the *Federal origin of the national banking associations*.

The repeal of the particular jurisdiction flowing

from *the Federal incorporation* of the national banks, created no alteration in the jurisdiction which might be exercised by the Circuit Courts, in suits, to which such banks were parties, arising between citizens of different states, or under the constitution, or treaties, *or under any law of the United States not conferring upon those banks their corporate character.*

A national bank located in one State might still sue the citizen of another State, in a Circuit Court of the United States, in either State.

A national bank, in cases arising under the constitution, or treaties, or under any law of the United States not establishing nor regulating the national banking system, might, without reference to the citizenship of the parties, still sue in any Circuit Court of the United States for the District whereof the defendant was an inhabitant, or wherein he was found, when the matter in dispute exceeded, exclusive of costs, the sum or value of $500.

The restriction, under the Act of 1882, of the jurisdiction over suits brought by or against national banks, to such jurisdiction as might be exercised over suits brought by or against banks not organized under any law of the United States, was, in effect, but a limitation of the jurisdiction, in cases to which national banks should be parties, to such jurisdiction as might be exercised in suits brought by or against *ordinary citizens of the States.* For State banks were but citizens of the States which created them, and, in suits brought by or against these artificial citizens, the jurisdiction of the national

tribunals, whether depending upon the subject-matter, or upon the citizenship of the parties, was, in general, such only as might be exercised by those tribunals over natural persons who were citizens of the States.

In this condition of the law, was passed the Act Cong. of March 3, 1887 (24 Stat., 552), afterwards corrected by that of August 13, 1888. (25 Id., 434).

The Act of 1887, as corrected by that of August 13, 1888, is an act to amend the Act Cong. of March 3, 1875, "*and for other purposes.*"

The Act of March 3, 1875, though it effected no change in such prior statutes as conferred upon the Circuit Courts jurisdiction in special cases and over particular subjects, may be said to have superseded by adoption, revision or omission, most, if not all, of the previous legislation relating to the jurisdiction, in general, of those tribunals.

What is thus remarked of the Act of 1875, may be asserted, with equal correctness, of the Act of 1887.

Under the 1st section of the Act of 1887, the judicial power of the United States, at law and in equity, with exceptions of an obvious, if not necessary, nature, is vested in the Circuit Courts almost as far as permitted by the Constitution, and, substantially, in the language of that instrument.

To those courts is committed by that section, jurisdiction "of *all* suits," of a civil character and involving a given sum or value, arising under the Constitution or laws of the United States, or treaties, "or in which there shall be a controversy between citizens of different States," "or a controversy between citizens of the same State, claiming lands under grants of different States."

The jurisdiction conferred by the 1st Section of the Act of 1887, upon the Circuit Courts in "*all* suits" arising under the constitution, laws or treaties of the United States, as such jurisdiction depends *upon the subject-matter*, and not upon the character or citizenship of the parties, can be exercisible no *less* where a national bank is party, than where an individual, who is a citizen of a State, becomes party.

And in suits over which jurisdiction is granted by that section, on account of the citizenship of the parties, a national bank would be regarded, even when not expressly so declared by the legislature, a citizen of the State in which the bank was located. (Ante, pp. 2-3.)

Hence, in suits brought by or against national banks, the 1st Section of the Act of 1887, if considered by itself, would effect no alteration in the jurisdiction which was vested in the Circuit Courts under Sec. 11 of the Act of 1789, (R. S. U. S., Sec. 629, Sub. 1), under Sec. 1 of the Act of March 3, 1875, and under R. S. U. S., Sec. 629, Sub. 10, until the repeal of this last enactment, by the *proviso* contained in the Act of 1882.

But the 4th Section of the Act of 1888, provides as follows:

"That all national banking associations established under the laws of the United States shall, for the purpose of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State.

The provisions of this section shall not be held to affect the jurisdiction of the Courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank."

(24 Stat. 554-555.)

It is upon the construction given by the plaintiffs in error to the first clause of the 4th Section of the Act of 1887, that the Court below is supposed to have acted without jurisdiction.

This construction limits the jurisdiction of the Federal tribunals in suits to which a national bank shall be party, to such jurisdiction as may be exercised by those tribunals in suits between citizens *of one and the same State.*

The national banking system was established and has been maintained as an important auxilliary of

the government, strengthening the public credit and diffusing the equivalent of money throughout the Union.

Was it the purpose of Congress to provide, in effect, by the Act of 1887, that though jurisdiction, founded upon diversity in citizenship, might continue to be freely exercised by the Circuit Courts, in suits brought by or against the most inconsiderable of the corporations from time to time created under State laws, yet no banking association erected under national authority, should be suffered, on the like ground of jurisdiction, to sue or be sued, either originally or upon removal, in any of the Federal tribunals?

In advance of the decision below, this question had been determined in the negative.

First Natl Bk. vs. Forrest, 40 Fed. Rep. 705.

And to answer the inquiry in the affirmative, the clearest expressions on the part of the legislature, would seem to be indispensable.

It is felt and admitted, that the last member of the first clause of the 4th section of the Act of 1887, is not without extensive operation, even when construed to limit the jurisdiction of the Federal tribunals over suits to which national banks shall be parties, to such jurisdiction as may be exercised by those tribunals over controversies between individuals who are citizens of one and the same State.

For, under the 1st section of that Act, the Circuit Courts retain their jurisdiction over suits arising under the Constitution, laws and treaties of the United States, and in controversies over lands claimed under grants from different States, notwithstanding the parties to such suits and controversies may be citizens of one and the same State.

Yet that the second member of the clause is thus operative, under a particular construction, neither establishes the correctness of that construction, nor shows that the clause may not be equally effective, under a different interpretation.

It is here that our position becomes most opposed to the contentions of the plaintiffs in error, that the right of suit by the national banks in courts of the United States, depends upon the second member of the first clause of the 4th section of the Act of 1887, (Brief, p. 9,) and that the members of that clause are entirely consistent with each other. (*Id.* p. 10.)

It has been seen, that, under the the 1st section of the Act of 1887 and the definition contained in the first clause of the 4th section of that Act, a suit between a national bank located in one State and an individual who is a citizen of another State, constitutes a suit between citizens of different States, and is subject, as such, to the jurisdiction of the proper Circuit Court of the United States.

But the jurisdiction thus plainly conferred, on the

ground of diversity in citizenship, has been wholly repealed, in suits by or against national banks, if the second member of the first clause of the 4th section of the Act has limited the jurisdiction of the Federal Courts, in those suits, to such jurisdiction only as may be exercised by the same tribunals over controversies between individuals who are citizens of one and the same State.

In order to give effect to the different parts of this enactment, it becomes necessary, therefore, to seek a more conservative operation for the second member of the first clause of the 4th section.

U. S. *v.* Landram, 118 U. S. 85.

Every enactment must be restrained within narrower limits than its precise terms may import, whenever it is perceived that those terms are susceptible of embracing cases which it was not the intention of the legislature to include.

For the portion of the section now in question, an adequate operation may be found, by supposing that it was here the intention of the legislature to do no more than to conform the jurisdiction in cases to which a national bank should be party, to the jurisdiction which might be exercised, *in cases of like description*, arising between individual citizens of one and the same State.

that member of the clause achieved the result which had been attained by the proviso found in the 4th section of the Act of 1882, and each part of the Act of 1887 becomes consistent and harmonious with the other.

Upon this construction, the last member of the clause in question was not designed to relate to the jurisdiction which might be exercised, *upon the ground of diversity of citizenship*, in cases to which a national bank should be party, the jurisdiction exercisible upon *that* ground, in such cases, being governed by the provisions contained in the first member of that clause, when read in connection with the 1st section of the Act.

The 1st section of the Act of 1887 is *in pari materia* with the 1st section of the Act of March 3, 1875.

The 4th section of the Act of 1887 is *in pari materia* with the proviso contained in the 4th section of the Act of 1882.

The repeal of the jurisdiction arising from the *Federal incorporation* of the national bank is effected, under the proviso contained in the 4th Section of the Act of 1882, by restraining, in substance, the exercise of jurisdiction in suits "*by or against*" a national bank, to such jurisdiction as might be exercised in suits "*by or against*" a bank incorporated under the laws of the State in which the national bank is located, and, *hence*, in effect, to such juris-

diction as might be exercised in suits "*by or against*" individual citizens of the State in which the national bank is located.

By the 4th Section of the Act of 1887, this repeal is accomplished by limiting, in effect, the jurisdiction in suits "by or against" a national bank, to the jurisdiction exercisible, in case of like description, "*between*" individual "citizens of the same State."

In order to render the terms of the 4th Section of the Act of 1887, the exact legal equivalents of the terms of the proviso contained in the 4th Section of the Act of 1882, it would, indeed, become necessary to interpret the phrase "cases *between* individual citizens of the *same State*" as interchangeable with the terms "cases *by or against* individual citizens of the *same State as that in which the national bank is located*."

To this interpretation an obstacle has been felt by the defendant in error, arising from the force of the preposition "*between*," not only as that word is employed in the 1st Section of the Act of 1887, but as it is found, in connection with *parties*, both in the constitution and in the uniform course of legislative and judicial expression.

The difference which undoubtedly exists in the terms of the 4th Sections of the Acts of 1882 and 1887, may have been, *intended*, of course, as argued by the plaintiffs in error, (Brief, pp. 6–7,) to denote a distinction in the ends for which these sections were enacted.